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February 17, 2009

Branch Chief,
Regulations and Paperwork Management Branch,
U.S. Department of Agriculture, STOP 0742,
1400 Independence Avenue, SW.,
Washington, DC 20250-0742

Submitted via email <http://www.regulations.gov>

RE: Rural Development Guaranteed Loans; Interim Rule

Dear Mr. Michael Foore and USDA Reviewers:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the USDA interim rule regarding the combining of four USDA guaranteed lending programs into a single loan platform and for other purposes.

Background

The USDA is proposing to establish a unified guaranteed loan platform for the enhanced delivery of four existing Rural Development guaranteed loan programs-- Community Facility; Water and Waste Disposal; Business and Industry; and Renewable Energy Systems and Energy Efficiency Improvement Projects. This interim rule eliminates the existing loan guarantee regulations for these four programs and consolidates them under a new, single regulation. In addition to consolidating these four programs, this interim rule incorporates provisions that will enable the Agency to better manage the risk associated with making and servicing guaranteed loans and that will reduce the cost of operating the guaranteed loan programs.

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

The USDA also published in the Federal Register on February 13, a request for comment on whether to extend the effective date of the interim rule until June 1, 2009.

ICBA Views

We concur that the interim final rule should be extended 104 days as proposed by the USDA. In addition, we believe that the USDA should also extend the comment period on the interim final rule by an additional thirty days since the interim final rule was published in late December and came at a very busy time for the financial sector and community banks given the current serious economic issues facing the nation.

ICBA concurs with the general goals of the regulation to streamline the regulatory framework of these programs and make them easier to use for lenders and borrowers. We agree with USDA's goals of minimizing the time and effort in dealing with separate sets of regulations and requirements and that such a reorganization could free up agency personnel to spend their time in more constructive pursuits to enhance the administration and effectiveness of these program.

However, ICBA has concerns in regards to some of the program changes established in the interim final rule.

First, we do not agree with deleting the low documentation application. The low documentation application should remain available as it can reduce the regulatory burdens experienced by lenders under the programs. If USDA has concerns with the low documentation application, then those specific issues should be addressed without eliminating the application itself. The "low-doc" application's goal was to speed up the turn around time for approval of loans to enhance the timely delivery of credit. We believe this is an important goal that necessitates the retention of this application and the application could facilitate greater use of USDA programs by community banks.

In addition, ICBA appreciates the need to have criteria for determining "preferred lenders." However, one of the criteria, that lenders have made "a minimum of 10 guaranteed Business and Industry loans," is troublesome. This particular criterion may not be applicable to some community banks, particularly those in remote rural areas, which could most benefit from the use of these programs. These lenders may meet the other criteria noted in the rule, but be excluded from preferred lender status because of a lack of demand for these loans in their marketplace.

USDA should either lower the number of loans required or preferably, move away from a volume requirement to simply requiring that preferred lenders have made "several" guaranteed loans in all USDA programs in addition to the other criteria noted in the rule. There are thousands of community banks in rural communities across the U.S. and the USDA's programs need to ensure that there are no artificial barriers to their use of these important programs.

Further, USDA provides several definitions of the term "Rural and Rural Area" including the statement, "notwithstanding any other provision of this definition, in

determining which census blocks in an urbanized area are not in a rural area, the Agency shall exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than 2 census blocks that are otherwise considered not in a rural area under this definition.”

ICBA notes that it appears difficult to know or determine the application of the term “rural and rural area” based on the above wording and that it may be difficult for lenders to interpret the meaning of this phrasing. We suggest that USDA ensure that the term “rural and rural area” not be broader in its application than would currently be allowed for eligibility requirements under these programs. The term “rural and rural area” should not be allowed to be expanded under these programs as that is not an issue that should be included in this regulation, which is designed to streamline existing regulations and minimize risks to the agency while making the programs easier to use for lenders and their customers.

Another issue raised by community bankers stems from their desire to utilize USDA Rural Development Community Facility loans for community facilities that wish to sell bonds or find credit for capital projects. This issue could be addressed to a significant degree if the Federal Home Loan Banks (FHLB) were assured that the USDA rural development loan guarantees could be pledged as collateral as is the case with USDA Farm Service Agency guaranteed loans. USDA regulations should specifically state that USDA rural development loan guarantees can be pledged for collateral and liquidity purposes to the FHLBs. This assurance in USDA regulations could facilitate a significant source of new liquidity for community banks across the country, increase use of USDA rural development programs and benefit rural borrowers.

Conclusion

Because the regulation is lengthy and complex and due to the reasons cited by USDA for extending the effective date of the interim final rule to June 1, 2009, ICBA also requests that USDA extend the comment period on the interim final rule by an additional thirty days. In addition, we request that the USDA address the issues noted above in our comment letter.

If you have any questions or need additional information, please contact the undersigned by email at mark.scanlan@icba.org or by telephone at (202) 659-8111. Thank you.

Sincerely,

/s/

Mark Scanlan
Vice President
Office of Agriculture and Rural Policy